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USWEST

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MAR 15 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Elridge A. Stafford
Executive Director-
Federal Regulatory

Notice of Written Ex Parte

March 15, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: LEC-CMRS Non-discrimination Safeguards
GEN Docket No. 90-314

Dear Mr. Caton:

The attached material was submitted today to Barbara Esbin of the Wireless Telecommunications Bureau. Please include this letter and the attached material in the record of the abovementioned proceeding.

In accordance with Section 1.1206(a)(1) of the Commission's rules, the original and one copy of this letter with attachments are being filed with your office.

Acknowledgment and date of receipt of this letter are requested. A duplicate of this letter is included for this purpose. Please contact me should you have any questions concerning this matter.

Sincerely,

Elridge A. Stafford

Attachment

cc: Barbara Esbin

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**FEDERAL COMMUNICATIONS COMMISSION
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March 15, 1996

Ms. Barbara Esbin
Commercial Wireless Division
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

RE: LEC-CMRS Non-discrimination Safeguards
GEN Docket No. 90-314

Dear Ms. Esbin:

Attached herewith are additional comments regarding LEC-CMRS safeguards that U S WEST Communications wishes to submit for your consideration.

If you are interested in further discussion of these points, I would be glad to arrange a meeting, either in person or via telephone, with the U S WEST attorney who prepared this material.

Thank you for your kind consideration. Please feel free to call me if you have any questions

Sincerely,

Elridge A. Stafford

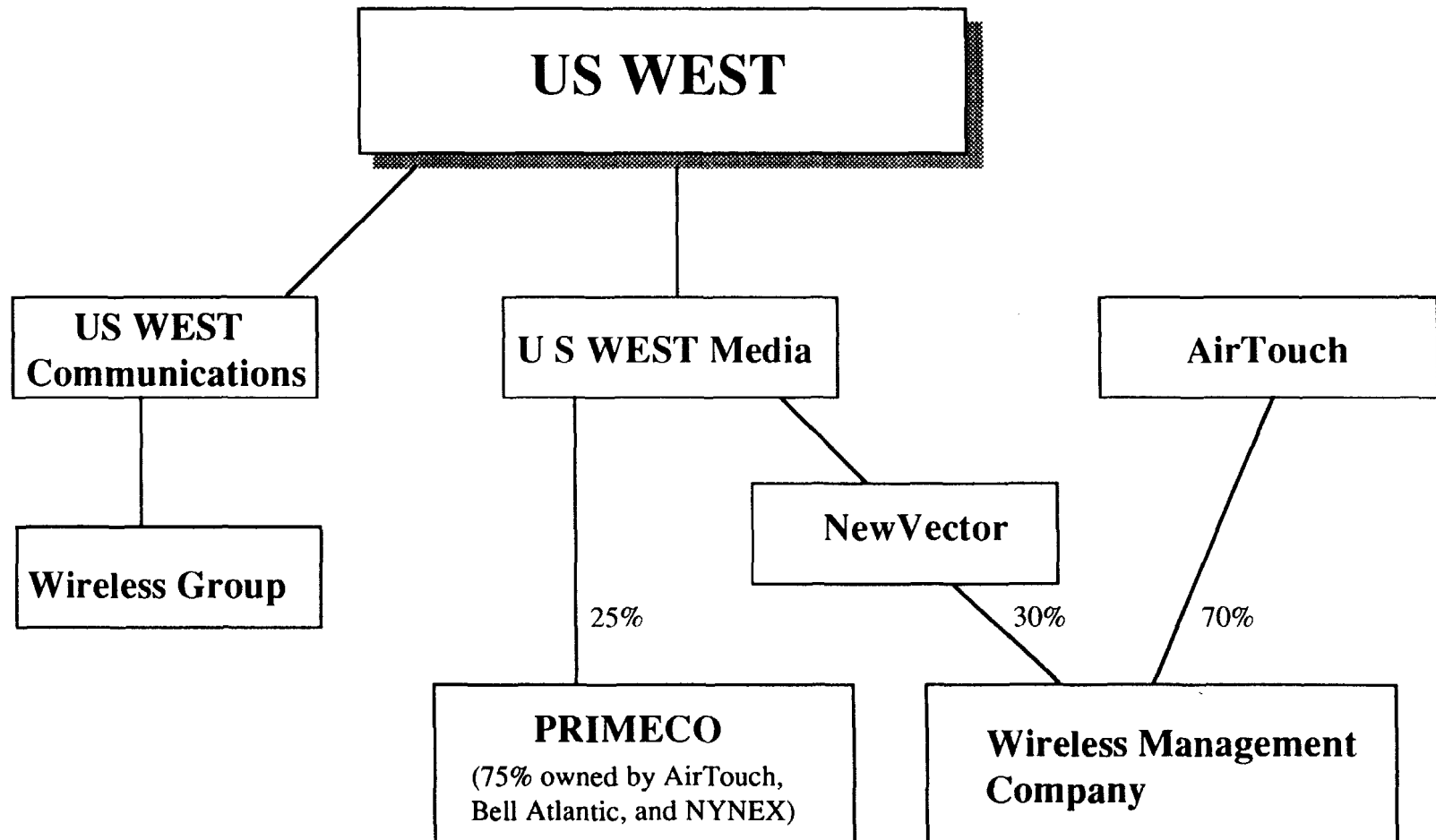
Attachment

cc: David Nall

U S WEST

**Safeguards for LEC Provision of
10 MHz PCS on Integrated Basis**

CORPORATE STRUCTURE



USWC PCS

U S WEST Communications Group, Inc. (NYSE: USW)

- Plans to provide 10 MHz PCS on integrated basis to customers within USWC's landline service area.
- Concerned about delays in D and E auction, and efforts by competitors to re-write non-structural safeguard requirements in way that would stifle USWC's efforts to introduce additional competition.

USWC's PCS BUSINESS CASE IS PREMISED ON 1Q97
MARKET ENTRY AND COMPLIANCE WITH
REASONABLE REQUIREMENTS (e.g. PART 64).

Existing Safeguards are Adequate for LEC Provision of 10 MHz PCS Services

- FCC has recognized the significant potential consumer benefits associated with permitting LECs to hold 10 MHz PCS licenses and provide in-region PCS services on an integrated basis.
 - “We . . . find that allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks. We believe that these economies will promote more rapid development of PCS and will yield a broader range of PCS services at lower costs to consumers.” Second PCS Report at para. 126 (Oct. 22, 1993).

Accounting Separation Can be Achieved Under Existing Rules

- Excessive burdens should not be imposed on LECs seeking to compete with 30 MHz PCS players and incumbent cellular companies.
- Existing Part 64 rules protect against cross-subsidization. Although developed for non-regulated activities (e.g. CPE, enhanced services), Part 64 is equally effective when applied to other non-rate regulated activities such as CMRS.
- Issues unique to PCS can be addressed in the accounting plan approval process.

Part 64 Has a Proven Track Record

- Part 64 rules have been affirmed on appeal.
SWB v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).
- Recent FCC decision:
 - “[O]ur accounting safeguards with regard to non-regulated services sufficiently protect against the potential for cross-subsidization.” Inmate-Only Payphones Declaratory Ruling, RM-8181, para. 27 (Feb. 20, 1996).

PART 64 HAS BEEN TESTED AND RE-TESTED. RESULT
-- IT WORKS.

U S WEST has a good track record for Part 64 compliance

- FCC-directed audit of USWC's adjustments to the Common Line revenue pool for 1988 and 1Q89 revealed that:
 - USWC had misstated or miscalculated only 0.1% of the total of \$2.2 billion, and
 - Net effect was an understatement of costs by approximately \$2.6 million.

BOTTOM LINE: RATEPAYERS WERE NOT HARMED

U S WEST has taken corrective action

- All apparent “violations” resulted from either clerical errors or misunderstandings of the FCC’s directives.
- All miscalculations have been corrected.
- Independent audit by Coopers & Lybrand showed that USWC maintains an effective internal control structure in all material respects.

ACCOUNTING SEPARATION WORKS

No New Interconnection Requirements are Needed

- Under 1996 Act, any carrier, including CMRS, can request any network element from USWC's land-line network. (Section 252(b)).
- In addition, if USWC makes any wireline capability available to an affiliate or to another carrier, it must make the same capability available to all other carriers on equal terms and conditions. (Section 251(c)(2)(C)).

USWC's CMRS COMPETITORS HAVE ALL THE PROTECTION
THEY NEED IN THE 1996 ACT.

Network Disclosure Rule Should Require “Reasonable Notice” of Changes

- 1996 Act codifies FCC’s former rule requiring all carriers to give “reasonable notice” of changes.
 - Section 251(c)(5) requires incumbent LECs to “provide reasonable notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier’s facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.”
- USWC will provide *reasonable* public notice of all additions to interconnections between its LEC operations and CMRS operations.

Network Disclosure Cont'd

- There is no need to impose additional use restrictions on PCS (e.g., rigid 6 month ESP rule).

OF COURSE, ANY NEW INTERFACE MADE AVAILABLE TO
USWC-PCS WILL BE MADE AVAILABLE TO OTHER CMRS
PROVIDERS ON SAME TERMS AND CONDITIONS

CPNI presents unique issues to LEC/PCS

- Key to LEC/PCS success in the marketplace is seamless integration of landline and wireless services -- vision first articulated by the FCC.
- USWC's PCS service will be an (optional) adjunct to wireline service:
 - one number;
 - one voice mail box;
 - one bill;
 - one business office contact.

CPNI Cont'd

- Existing USWC business offices will support ALL customers (i.e. wireline-only, PCS-only, wireline/ PCS).
- CPNI restrictions developed in other contexts could severely impact USWC's ability to meet customer expectations.
 - “We reject the suggestion . . . that we prohibit AT&T from disclosing its customers' CPNI to McCaw, because such a prohibition would undercut the benefits of the AT&T/McCaw combination: the ability of AT&T/McCaw to offer its customers the ability to engage in ‘one-stop shopping’ for their telecommunications needs.” AT&T/McCaw Order, at para. 83 (1994).
 - “Customers . . . rightfully expect that when they are dealing with their carrier concerning their telecommunications services, the carrier's em-ployees will have available all relevant information about their service. This consideration argues for looser restrictions on internal use of customer information.” House Report 104-204.

CPNI Cont'd

- USWC will comply with the requirements of the new Act (Section 222)
 - USWC will disclose its CPNI to non-USW affiliates upon written request by the customer..
 - USWC will develop procedures to ensure that its marketing divisions (both LEC and PCS) will not have access to proprietary information obtained from interconnecting carriers (including CMRS).
- Pre-Act approvals should be valid under 222(c)(1)

CPNI Cont'd

- To facilitate FCC vision of seamless, integrated offering, USWC-PCS needs to access to USWC-LEC CPNI
 - Section 222(c)(1) permits use of CPNI in provision of service from which such information is derived "or services . . . used in the provision of such telecom. service."
 - USWC's PCS service will be a local telephone exchange service within the amended Communications Act [§ 153(r)].
 - Besides, USWC's PCS service will be "used in the provision of" local telephone exchange service -- just like Caller ID, voice mail, and other optional features.

**THE CPNI RULES SHOULD BE FLEXIBLE ENOUGH TO PERMIT LEC/
PCS INTEGRATED OPERATIONS**

Any Other Computer III requirements are
inapplicable to LEC provision of PCS

- Computer III aimed at ensuring fair and non-discriminatory interconnection and unbundling of network elements for ESPs.
- FCC has held that the Computer III/ONA rules do not apply to carrier services. See e.g., 4 FCC Rcd at 2837 (1989); 2 FCC Rcd at 3050 (1987).
- 1996 Act (251 unbundling & 252 negotiation obligation) eliminates need for these rigid rules.

CONGRESS HAS REPLACED THE COMPUTER III REQUIREMENTS

There are built-in safeguards in the system

- LEC PCS accounting plans will be subject to public comment and FCC approval.
- Section 208 complaint process always remains available to correct any perceived violations.
- Additional or expanded reporting requirements would conflict with the President's Regulatory Reform Initiative and the deregulatory spirit of 1996 Act.
- FCC must guard against competitors' misuse of the regulatory process.

LET THE MARKETPLACE DECIDE WHO WINS.